XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

आदेश पत्रक

मामला क्रमांक Cr.A. No. 260 सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J

APPELLANTS

1. Baijnath Das, aged 23 years, son of Jagmohan Das, Occupation Driver
2. Ganesh Ram, son of Beersai Ram, aged 20 years, Occupation Agriculturist
3. Anil Kumar Das, Son of Vidhya Sagar, aged 18 years, Occupation Student

All residents of village Kamari, P.S. Shankergarh, Tehsil- Kushmi, Distt. Surguja (C.G.)

Vs.

RESPONDENT State of Chhattisgarh

10-8-2007

Shri Neeraj Mehta, Advocate for the appellants.

Shri Sushil Dubey, Govt. Advocate for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 20-2-2004 passed in S.T. No. 422/2003 whereby learned 4th Additional Sessions Judge, Ambikapur convicted the appellants for offence under Section 395 of I.P.C. and sentenced them to undergo R.I. for 10 years, to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo R.I. for three months.

3. Case of the prosecution, in brief, is that complainant Anil Toppo, resident of village Alkhadiha Khutari, teacher by profession, was sleeping in his house in the intervening night of 5th and 6th August, 2003. At about 1.30 a.m., his door was knocked. He opened the door and thereafter two persons holding gun and sword encircled

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(32)

आदेश पत्रक

मामला क्रमांक Cr.A. No. 266 सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

him and demanded money on the threat of life whereupon he handed over a sum of Rs. 1,000/- to the accused persons. They made search in the room and carried deck and box from his home. At that time, siren of police jeep was heard and hearing this, dacoits got frightened and they fled from there in a jeep stationed outside his home. Crowed gathered in the house of the complainant. Police reached there and thereafter the complainant and the police persons chased the accused persons by jeep and they were over taken at a distance of 4-5 km. The accused persons who were 5 in number tried to run away after alighting from the jeep, however they were overpowered and arrested and the looted articles – a sum of Rs. 1,000/- and the deck and box were recovered from them. The weapon of offence – gun and sword etc. were also recovered. After the accused persons were apprehended, Dehati Nalisi of Ex. P-1 was lodged at about 2.30 a.m. and on the basis of the Dehati Nalisi, F.I.R. of Ex. P- 8 was registered in the morning at 7.30 a.m.

4. Learned counsel for the appellants submits that from perusal of the Dehati Nalisi as also from the F.I.R., there is no allegation that the persons who committed dacoity were 5 in number and only two persons have been mentioned whereas for constituting dacoity, minimum number of persons should be 5 as per Section 391 of I.P.C. Learned counsel for the appellants further contended that there is material discrepancy in the statement of P.W. -1 the complainant and that of the Investigating Officer regarding recovery of Rs. 1,000/-. The

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No 265 सन् 2007

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

complainant has stated in his deposition before the Court that same was recovered from Anil Das, whereas the Investigating Officer has deposed that the same was recovered from Chhote Heeralal. He has also contended that there is no receipt of the deck produced by the complainant and seized by the police and the seized articles have not been put to identification and in the absence of the identification of the articles, the appellants could not be convicted in the crime in question. Referring to the statement of P.W. -2 Chunda Khalkho, driver of the jeep, it has been argued that he is a pocket witness of police and driver of the police jeep and this witness who is signatory of seizure memo of Ex. P-2, P-3 and P-4, has categorically stated that he does not know as to what articles were seized from individual person.

5. On the other hand, learned counsel for the State supported the impugned judgment and submitted that the accused persons, 5 in number, were immediately apprehended with the looted articles after being chased within a very short time of the incident. The jeep which was used in commission of the offence was seized vide Ex. P-4 from accused Baijnath whereas the deck and box was seized vide Ex. P-2 from accused Anil Das and the air gun was recovered vide Ex. P-3 from accused Ganesh Ram. The version of the incident as narrated by prosecution witnesses before the Court is reflected from the Dehati Nalishi and F.I.R. itself where details of the incident have been

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

आदेश पत्रक

मामला क्रमांक C.A. No. 201 सन् / 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

elaborately mentioned and it was lodged only after one hour of the incident.

6. I have heard learned counsel for the parties. I have perused the records.

7. In the Dehati Nalisi of Ex. P-1 which is recorded at 2.30 a.m. i.e. after one hour of the incident after the accused persons were apprehended with the looted articles, the sequence of events that occurred between 1.30 to 2.30 a.m. is clearly mentioned. So far as the argument of the learned counsel for the appellant that from perusal of the Dehati Nalisi, only two persons were involved in the offence, is concerned, it is true that as per the account given by the complainant only two persons entered in the house armed with a gun and sword who looted Rs. 1000/- and deck and box from the complainant's house, however the complainant has clearly stated that after committing dacoity, the accused persons went away from the place of incident and they fled by their jeep. They were immediately chased by patrolling police jeep and only after some time, all the accused persons who were 5 in number who were occupying the jeep were apprehended with looted articles. Therefore, the argument of the counsel for the appellants that only two persons committed dacoity cannot be accepted. The discrepancy in the statement of the complainant and the Investigating Officer are of no help to the defence particularly in the light of the fact that the incident has been detailed in the promptly lodged Dehati Nalisi and

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

आदेश पत्रक

मामला क्रमांक C.A. No. 268 सन् 2007

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

all the accused persons were arrested immediately with the looted articles and the jeep. Therefore, in the considered opinion of this Court, the prosecution has established the involvement of the appellants in the crime in question. The Court below has not committed any illegality in convicting the appellants under Section 395 of I.P.C.

8. Learned counsel for the appellants relied upon the judgments of the Supreme Court in the matter of **Kusho Mahton and another –v- the State of Bihar** reported in **AIR 1980 SC 788** and **Dhanai Mahto and another –v- State of Bihar** reported in **AIR 2000 SC 3602(1)** and contended that looking to the age of the appellants and further considering the fact that no one was hurt during the incident and the value of the looted articles, the sentence of 10 years' jail imprisonment is too excessive and lesser jail sentence be imposed.

9. From the evidence available on record, it appears that while the appellants were attempting dacoity in the house of the complainant, fortunately for the complainant, police party reached there and hearing the siren of the police jeep, the appellants fled from the scene of occurrence without completing their act, therefore, the value of the property may not be a reason for leniency, however taking into consideration that the appellants were aged 23, 20 and 18 years at the time of incident and they did not hurt anybody during the offence, the jail sentence of ten years is excessive.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

आदेश पत्रक

मामला क्रमांक C.A.No.260 सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10. In the result, the appeal is partly allowed. The conviction of the appellants under Section 395 of I.P.C. is maintained, however their sentence is modified and in place of 10 years jail sentence, they are sentenced to undergo R.I. for six years with a fine of Rs. 500/-, in default of payment of fine to further undergo R.I. for three months R.I. **Sd/-** **Dhirendra Mishra** **Judge**	